Introduction to the Law of Armed Conflict

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Colonel (ret.), USMCR

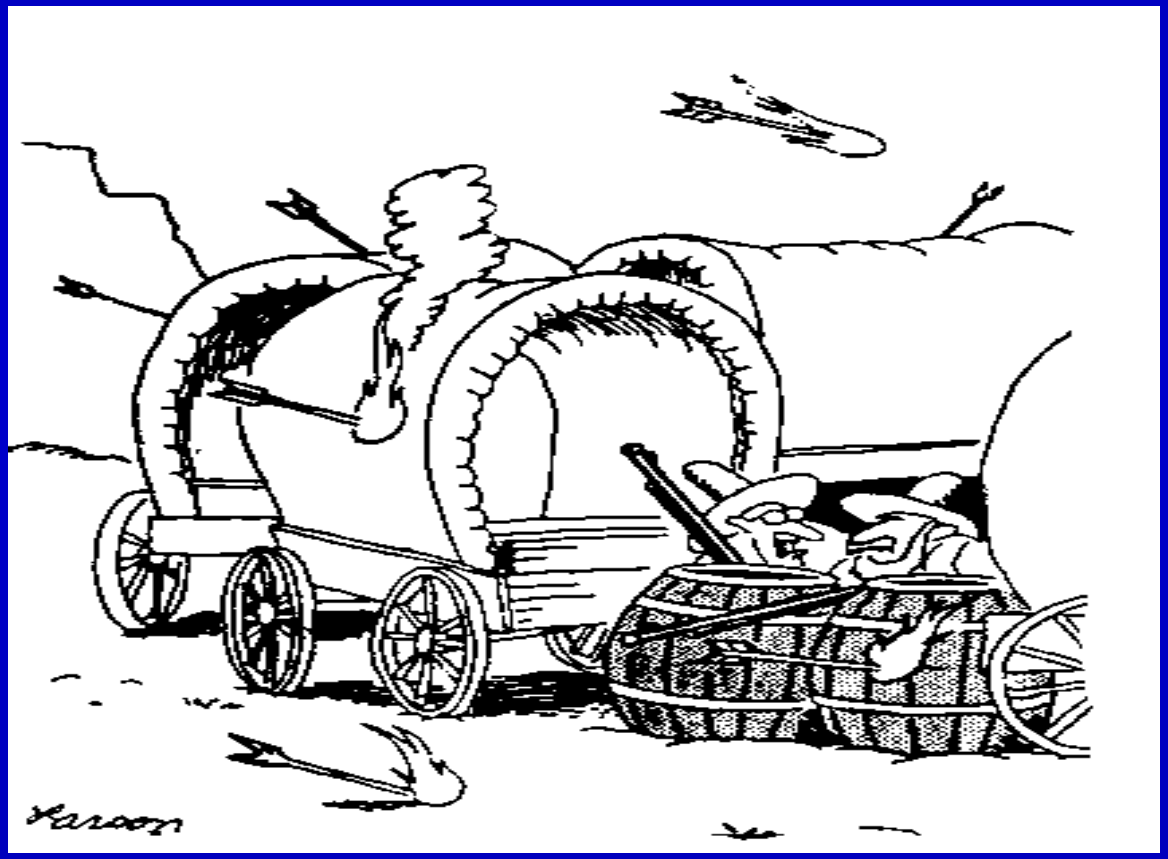
Whaddya Mean Extremists?

"The Marines I used to know were about as ruthless, bullheaded and foulmouthed a collection of juvenile delinquents and intellectual malcontents as could be assembled without cages, whips, and chains."

James P. Sterpa
Wall Street Journal

Typical Marine in LOAC Class

What is the Law of Armed Conflict?



"Hey! They're lighting their arrows! . . . Can they do that?"

Law of War: Relevance

"Law of war issues can be a mission stopper if they have not been identified and addressed in the planning [and training] process."

Colonel R. R. Matthews, USMC
CO 24th MEU

A Back-handed Compliment

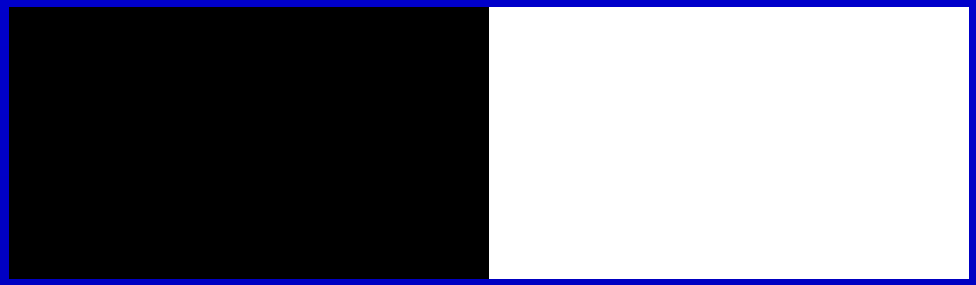
“My lawyer sits at my right hand, whether I like it or not.”

General Wayne Downing, U.S. Army

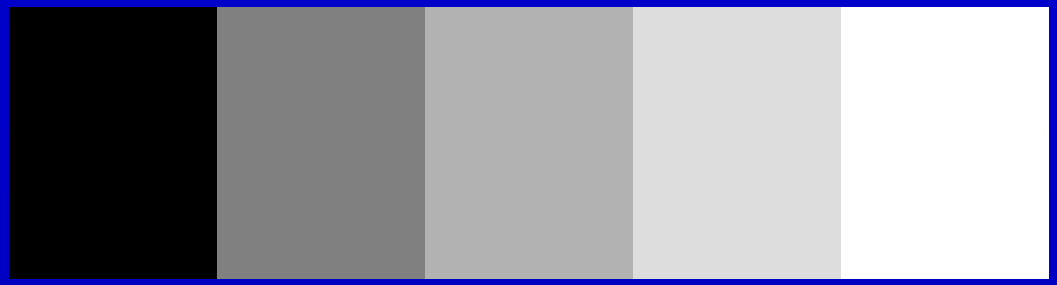
CINCSOC

21 July 1994

Law of War as Operators Would Like to See It



Law of War As It Really Is In Operations



Law of War--What's the big deal?

- "Americans don't need to study this stuff since we have better values than our enemies."

Law of War--What's the big deal?

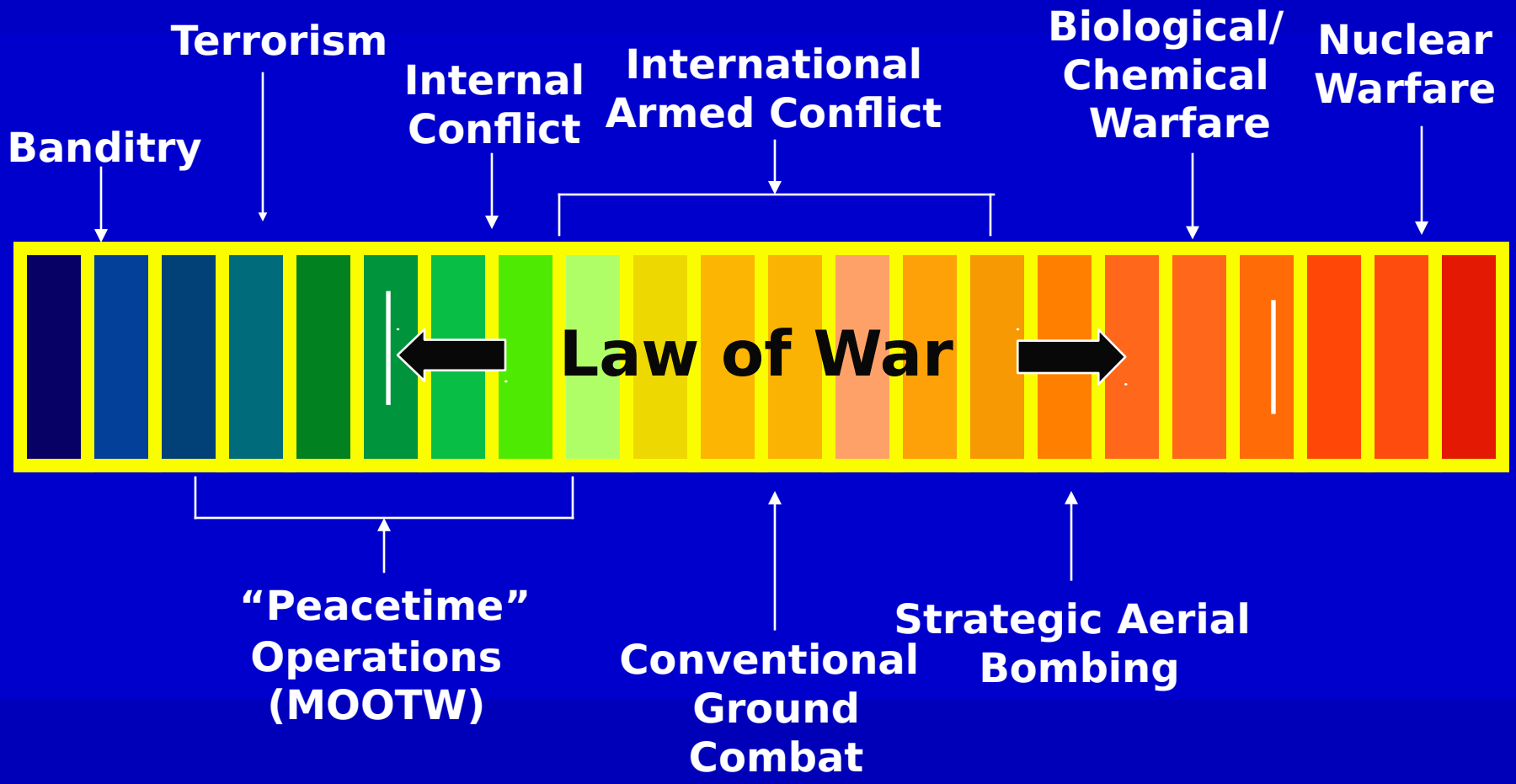
- "Americans don't need to study this stuff since we have better values than our enemies."
- "Since future U.S. military actions will likely be in 'other than war' situations, LOAC is no longer relevant."

Source: Photo News/Gamma Liaison

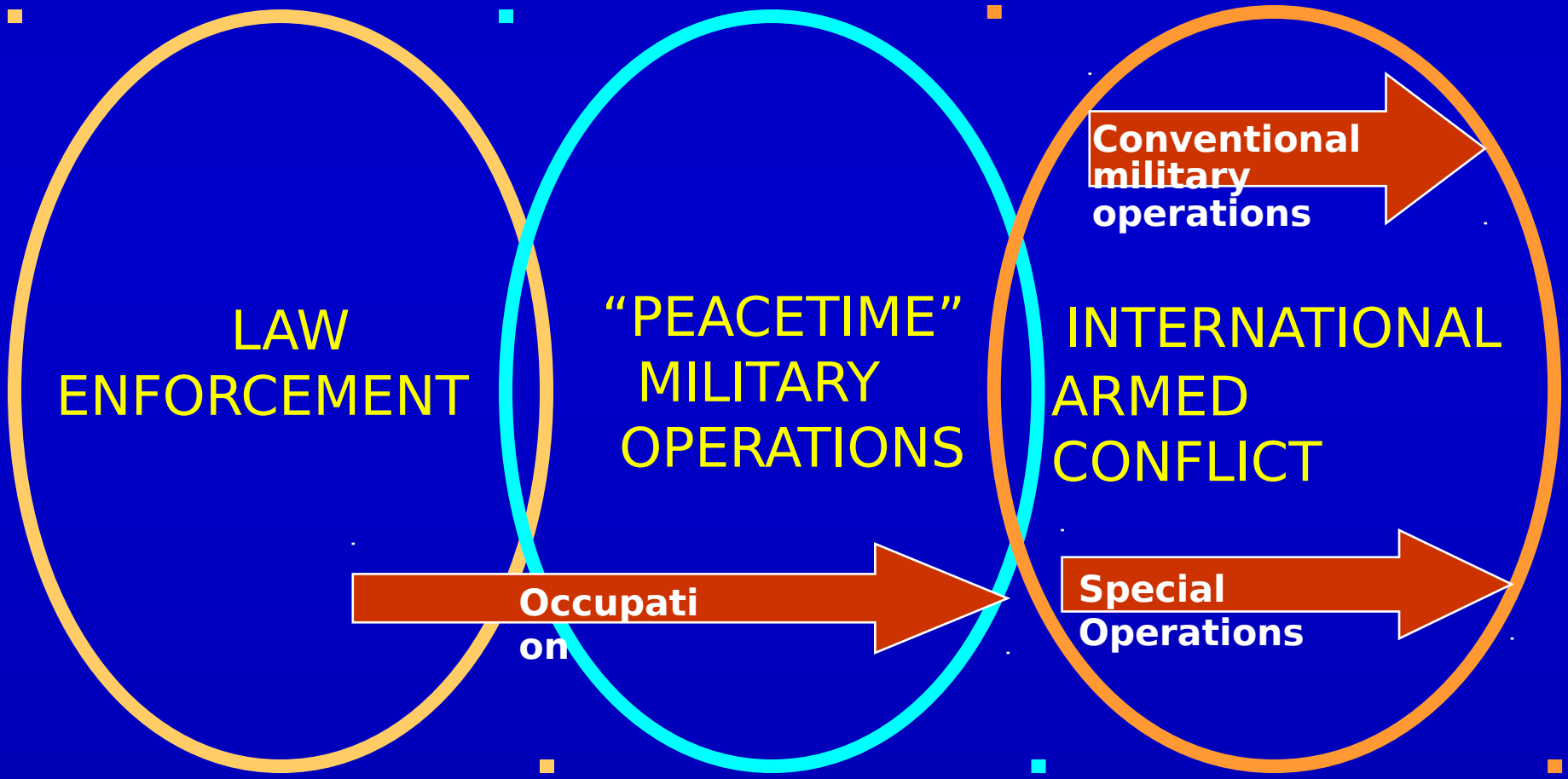
Not so Fast

- Canadian Airborne Regiment-Somalia
- Belgium Paratroopers-Somalia

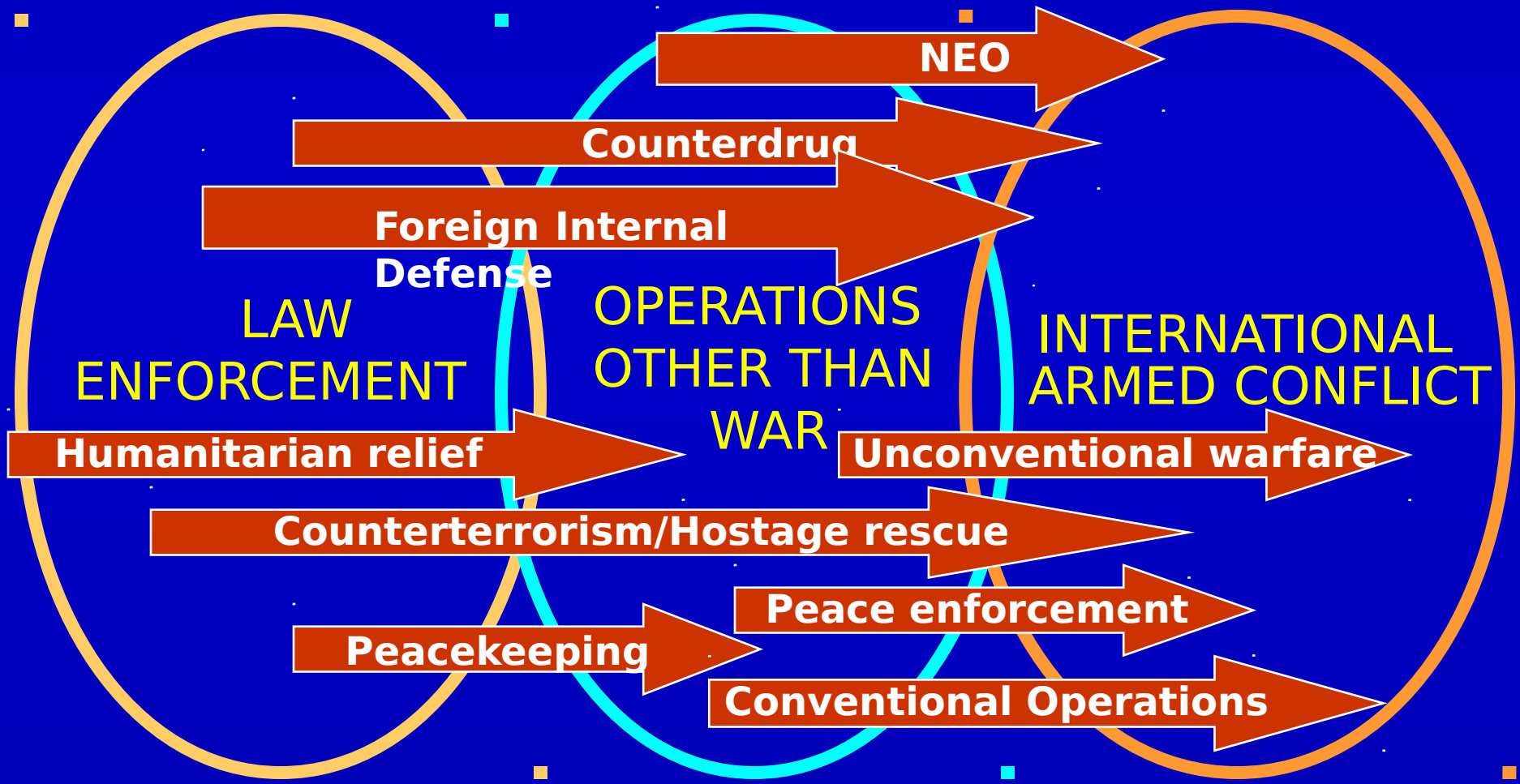
Application of Law of War to the Conflict Spectrum



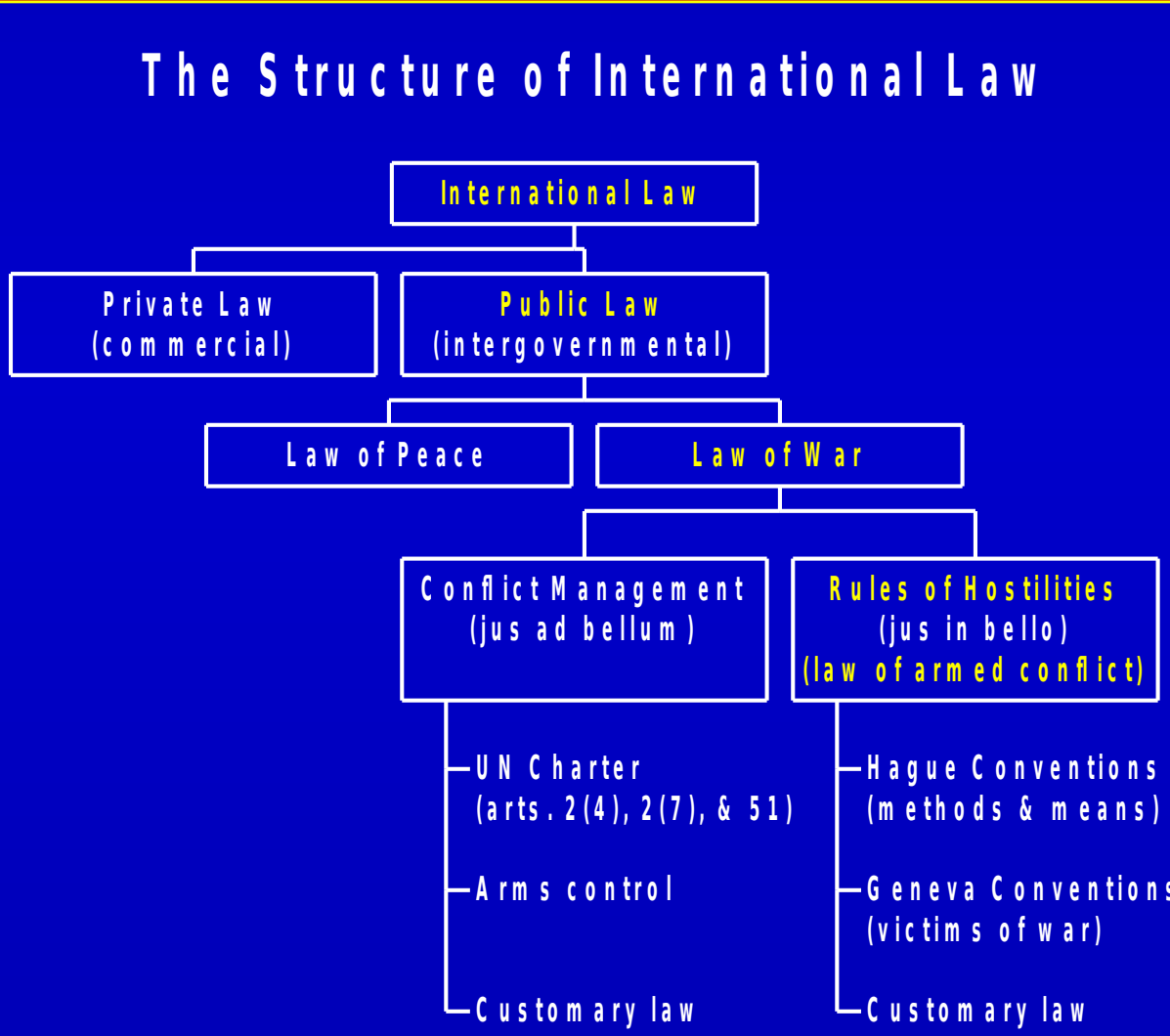
Military Operations in World War II



Special Operations Missions in Today's World



LOAC as a Subset of International Law



Sources of the Law of Armed Conflict

- publicists/jurists
- custom of nations
- international agreements

General Principles of the Law of Armed Conflict

- facilitates the restoration of peace
- compliance is based on reciprocity
- results of noncompliance
  - reprisals
  - political and economic costs
  - war crimes trials

General Principles of the Law of Armed Conflict

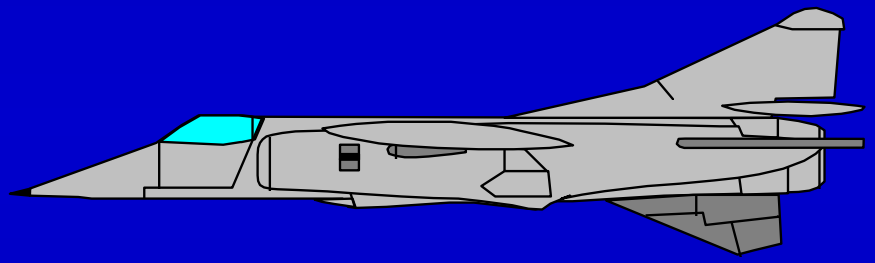
- customary law applies in cases not covered by international agreements
- what is not prohibited is permitted

Underlying Goal of the Law of Armed Conflict

To ensure that, to the maximum extent possible, the violence of hostilities is directed toward the enemy's forces and is not used to cause purposeless, unnecessary human suffering and damage to property

LOAC and the Principles of War

- objective
- offensive
- mass
- economy of force
- maneuver
- unity of command
- security
- surprise
- simplicity



When Does the Law of Armed Conflict Apply?

***de facto* test codified in Common Article 2 of the 1949 Geneva Conventions:**

"all cases of declared war or of any other [international] armed conflict . . . [and] to all cases of partial or total occupation"

Coalitions and Missions Other than War

Even when a part of an international coalition force, such as the UN or NATO, in operations other than armed conflicts, it is the policy and practice of the U.S. that its forces will comply with LOAC.

Internal Armed Conflict

Common Article 3 prohibits, as a minimum, the following acts against protected persons:

- violence to life and person, in particular murder, mutilation, cruel treatment, and torture
- taking of hostages
- outrages upon personal dignity, in particular, humiliating and degrading treatment

International Armed Conflicts

- Customary international law
- Hague Convention (IV) respecting the Laws and Customs of War on Land
- 1949 Geneva Conventions

Basic Principles of the Law of Armed Conflict

- Military Necessity
- Unnecessary Suffering and Destruction
- Proportionality
- Discrimination in use of weapons, means and methods

Military Necessity

Permits only that degree and kind of force, not otherwise prohibited by the law of armed conflict, required for the partial or complete submission of the enemy with a minimum expenditure of time, life, and physical resources

Unnecessary Suffering and Destruction

Prohibits the employment of any kind or degree of force not required for the purpose of the partial or complete submission of the enemy with a minimum expenditure of time, life, and physical resources

Proportionality

- Limits the use of force where noncombatants and their property may be involved or in cases of individual/unit self defense
- Does not apply In hostilities between combatants (Economy of Force is limiting principle)

Chivalry

Dishonorable (treacherous) means, dishonorable expedients, and dishonorable conduct during armed conflict are forbidden. Rooted in practicality and tradition.

Discrimination

A commander should attempt to use the most discriminating weapons, means and methods of warfare so as to minimize unnecessary suffering and collateral damage, consistent with mission accomplishment and force protection

“Collateral Damage”

It is not unlawful to cause incidental (unintended) injury or death to civilians, or collateral damage to civilian objects, during an attack upon a legitimate military objective provided the injury or damage is not excessive in light of the military advantage anticipated by the attack

“Rendulic Rule”

- Commanders are required to make good faith assessment using all information available in determining whether and how to engage targets
- No criminal responsibility even if hindsight indicates a different decision should have been made

Rules Concerning Means of Warfare

- It is especially forbidden to:
  - employ poison or poisoned weapons
  - kill or wound an enemy "treacherously"
  - kill or wound an enemy who has surrendered
  - declare that no quarter will be given
  - deploy weapons calculated(designed) to cause unnecessary suffering

CWC Limits on RCAs

- CWC prohibits parties from using RCAs as a “method of warfare.”
- No use solely against combatants

US Interpretation

CWC ban on RCAs limited to prohibiting use of RCAs in international or national armed conflicts

Legitimate Uses of RCAs in Peacetime

- Law enforcement
- Disaster / humanitarian relief
- Counterterrorist
- Hostage rescue

Legitimate Uses of RCAs in Armed Conflict

- Law enforcement against noncombatants
- Riot control
- Other noncombatant uses which are not “methods of warfare”

Rules Concerning Methods of Warfare

- It is especially forbidden to:
  - make improper use of
    - a flag of truce
    - the enemy national flag, insignia, or uniform
    - distinctive emblems of the Geneva Conventions
  - destroy or seize the enemy's property unless imperatively demanded by the necessities of war
  - pillage any town or place

Rules Concerning the Methods of Warfare

It is permitted to:

- **use ruses of war**
- **employ measures necessary for obtaining information about the enemy**
- **take possession of cash, funds, and realizable securities which are strictly property of the State . . . and generally, all movable property belonging to the State which may be used for military operations**

The 1949 Geneva Conventions

- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (“GWS”)
- Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (“GWS-Sea”)

The 1949 Geneva Conventions

- Geneva Convention Relative to the Treatment of Prisoners of War ("GPW")
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War ("GC")

GWS and GWS-Sea

- protection and care for the wounded, sick and shipwrecked
- rules for medical units, vessels, establishments, personnel, buildings, and stores
- the recognition of the distinctive emblem

GPW

- protection and care of prisoners of war
- rules for captivity, termination of captivity, and information bureaus and relief societies
- treatment of medical personnel and chaplains as retained personnel

GC

- protection and care of protected persons
- rules for aliens, internees, and information bureaus and relief societies
- law of occupation
- “grave breaches” and war crimes

Selected Applications of LOAC for Air Warfare

- SAR efforts for downed pilots are combatant activities and therefore can be attacked
- descending parachutists from disabled aircraft (as opposed to paratroops) may not be attacked unless they engage in combatant acts

Selected Applications of LOAC for Air Warfare

- medical and civil aircraft are not subject to attack unless they pose an immediate military threat or are being used for military purposes
- often impractical for medical aircraft due to significant requirements (advance notice of specific flight plan etc.)

National Obligation to Disseminate

The 1949 Geneva Conventions require parties to disseminate the text of the Geneva Conventions as widely as possible to their entire populations

DOD LOAC Program

DoD Directive 5100.77 requires each of the services and combatant commanders to develop effective LOAC training programs

Principles of Effective LOAC Training

- commensurate with anticipated/actual duties (one size does not fit all!)
- annual training is required and must be reported
- primarily responsibility of operators with support of JAGs if program is to be really effective